

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CRS Radio Holding Inc.	)	File No. EB-08-NF-0101
Licensee of Radio Station WFBX(AM)	)	NAL/Acct. No. 201132640002
Spring Lake, North Carolina	)	FRN 0004202685
Facility ID: 19875	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

Adopted: June 1, 2011

Released: June 2, 2011

By Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that CRS Radio Holding Inc. (“CRS”),<sup>1</sup> licensee of Station WFBX (AM), in Spring Lake North Carolina, apparently willfully violated section 11.35 of the Commission’s rules (“Rules”)<sup>2</sup> by failing to ensure that emergency alert system (“EAS”) equipment was operational. We conclude that CRS is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) and direct the company to submit a statement signed under penalty of perjury by an officer or director stating that Station WFBX(AM) currently has operational EAS equipment installed as required pursuant to section 11.35.

**II. BACKGROUND**

2. On October 28, 2008, in response to a complaint that the station had been without operational EAS equipment for more than a year, an agent from the Enforcement Bureau’s Norfolk Office (“Norfolk Office”) inspected Station WFBX’s main studio in Fayetteville, North Carolina. Station WFBX’s main studio was co-located with the main studio for co-owned Station WFAY. The agent observed that Station WFBX did not have any EAS equipment located in the room which contained the station’s control equipment. Moreover, the EAS equipment for Station WFAY was not operational, because it was turned off and was not connected to an antenna. None of the staff at Station WFBX could produce any EAS logs<sup>3</sup> or other evidence that any weekly or monthly EAS tests had been sent or received. Staff members for Station WFAY and Station WFBX stated that both stations had been without EAS equipment since the stations relocated to the current main studio. Stations WFBX and WFAY notified the Commission in letters

<sup>1</sup> At the time of the inspection, WCIE-AM, INC. was listed as the licensee for Station WFBX. See file number BL-20040831ACQ. After the inspection, the name of the licensee for Station WFBX was changed to CRS Radio Holding Inc. The change was administrative; ownership of Station WFBX did not change. CRS Radio Holding Inc. is currently listed as the licensee for Station WFBX. See file number BL-20040831ACQ.

<sup>2</sup> 47 C.F.R. § 11.35.

<sup>3</sup> See 47 C.F.R. § 11.35 (requiring EAS participants to log when EAS equipment is removed for repair and restored to service and to keep records when EAS tests are failed to be received).

dated May 14, 2008 that their studio locations had changed to the current main studio in Fayetteville.<sup>4</sup>

### III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>6</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>7</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>8</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>9</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

4. Section 11.35 of the Rules states that “Broadcast stations... are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation...”<sup>11</sup> On October 28, 2008, an agent from the Norfolk Office observed that Station WFBX did not have any operational EAS equipment installed when the station was in operation. The station also did not have any EAS logs indicating when EAS equipment was installed or removed or any records that any EAS tests had been sent or received. Staff members from Stations WFAY and WFBX said that both stations had been without operational EAS equipment since the studios relocated to their current location. Station WFBX relocated to the current main studio before May 14, 2008. Because CRS consciously operated Station WFBX without EAS equipment for more than one day, we find the apparent violations to be willful and repeated. Based on the evidence before us, we find that CRS apparently willfully and repeatedly violated section 11.35 of the Rules by failing to install operational EAS equipment while the station was in operation.

---

<sup>4</sup> See Letters from Todd A. Steiner, Counsel for CRS Radio Holding Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated May 14, 2008.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 U.S.C. § 312(f)(1).

<sup>7</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

<sup>8</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

<sup>9</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>10</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>11</sup> 47 C.F.R. § 11.35.

5. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or not operational is \$8,000.<sup>12</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>13</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that CRS is apparently liable for a total forfeiture of \$8,000.

6. We direct CRS Radio to submit a statement signed under penalty of perjury by an officer or director of CRS Radio stating that it currently has operational EAS equipment installed for Station WFBX(AM) as required pursuant to section 11.35 of the Rules. This statement must be provided to the Norfolk Office at the address listed in paragraph 11 within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, CRS Radio Holding Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of section 11.35 of the Rules.<sup>14</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, CRS Radio Holding Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that, within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture and Order, CRS Radio Holding Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 6 to the Norfolk Office listed below.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>8</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If

<sup>12</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35.

<sup>8</sup> See 47 C.F.R. § 1.1914.

payment is made, CRS will send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office; 1457 Mount Pleasant Road Suite 113; Chesapeake VA 23322 and include the NAL/Acct. No. referenced in the caption. CRS also shall email the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to CRS Radio Holding Inc C/O Putbrese Hunsaker & Trent, P.C.; 200 South Church Street; Woodstock, Virginia 22664.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P Husnay, Resident Agent  
Norfolk Office  
South Central Region  
Enforcement Bureau